law, history of

Law is a system of rules of conduct and rights formally recognized by society or prescribed by the authority in a state. It distinguishes between what is permitted and what is prohibited. The appearance of an organized court system in Egypt around 4000 BC marked the beginning of legal history. Under this system, the word of the king was law. The palaces were centers of law with judges administering justice. Records of wills, contracts, titles, and boundaries to land were maintained, and all legal actions were filed in the palaces. The Egyptian legal system endured until Egypt was conquered by Rome in the 1st century BC.

The oldest written code of law, the Code of Hammurabi (see HAMMURABI, CODE OF), came from the Mesopotamian legal system. Composed in approximately 2100 BC, the 285 provisions of the Code of Hammurabi controlled commerce, family, criminal, and civil law. Under the code, written pleadings began legal actions and testimony was given under oath.

Roman Law

The greatest contribution of the Roman Empire was the introduction of a legal system to the nations it conquered. The unified, written law of the Roman Empire--which at its height extended from England to Egypt--replaced unwritten native customs and rules.

ROMAN LAW had its recorded beginnings in the law of the Twelve Tables, formulated in 451-450 BC. These laws, primarily procedural, were cast in bronze and attached to the "Rostra," or orator's platform, in the Roman Forum so that all Roman citizens--especially the plebeians--might read and understand the law and be protected from arbitrary patrician justice.

Roman legal development ended with the codification known as the Corpus Juris Civilis (Body of Civil Law), which consolidated all existing law into a single written code. It was promulgated (AD 533-34) by the Byzantine emperor Justinian I and was known as the JUSTINIAN CODE. The code was a collection of past laws and opinions of Roman jurists and also included new laws enacted by Justinian. The Code of Justinian became the foundation of the present CIVIL LAW system. Civil law and COMMON LAW, formed in England, are the two major legal systems in the world today outside the Communist or socialist countries (see SOCIALIST LAW).

Other legal systems developed prior to the Middle Ages--the Chinese and Greek legal systems, for example. The Hebrew (see TALMUD), Islamic, Hindu (see MANU), and Roman Catholic canon (see CANON LAW) legal systems were rooted in religion, but their influence extended to the secular world. The Roman law system had, however, the greatest influence on Western legal development.

Law in the Middle Ages

The decline of the Roman Empire in Western Europe in the 5th century and the rise of the Germanic tribes suppressed legal development throughout much of Europe. The conquering Germanic tribes brought little to replace Roman law. GERMANIC LAW began as the unwritten custom of the tribe, not the enactment of any supreme authority in the state. The Lex Salica, composed about AD 500, was the most important of the written Germanic tribal codes; compared with the Code of Justinian, however, the Lex Salica was crude and rudimentary. Each Germanic tribe was governed by its own customs and rules. The uniformity and systematic jurisprudence of the Roman legal system contrasted sharply with the differing rules among the tribes.

The early Middle Ages saw little progress in the development of law. Few schools of law existed. Learning was left to monks and clergy. FEUDALISM and MANORIALISM, from about the 8th century on, created a land system of petty domains. Systematic justice was destroyed. Each region administered, developed, and recorded its own local laws. The Roman Catholic church and its canon law system became increasingly influential during the Middle Ages in the vacuum of legal advancement. Canon law borrowed from Roman law and thereby preserved the Roman system until its revival in the late 11th century.

In Bologna, Italy, around the year 1100, an awakening of learning in the field of law occurred. Under the guidance of Irnerius and his students, Justinian's works were resurrected and studied. Within another one hundred years, thousands of law students were studying in Bologna. These students spread through Europe. Commentators wrote opinions and treatises on legal cases and the law. They applied the principles of Roman law to Germanic and feudal customs, transforming Roman law into Italian law. During the 13th, 14th, and 15th centuries, faculties of law were founded in Spain, France, Germany, and the Netherlands. The studies conducted there were to form

the basis of the modern civil law systems of these countries. Various interpretations of legal thought inevitably began to spring up. In the 16th century, for example, a school of law called legal humanism emphasized the importance and flexibility of classical Roman law. In the 17th and 18th centuries, legal scholars such as Hugo GROTIUS and Samuel von PUFENDORF put forward theories of NATURAL LAW, and advocated the use of reason in combination with tenets of Roman law.

Modern Civil Law

Despite the renewed respect for law, the weakness of royal governments and the strength of the feudal system in the Middle Ages militated against any unified national law. Royal absolutism and growing nationalism in the 16th, 17th, and 18th centuries, however, began to unite nations and thus provided the foundation for unified legal systems. The French Revolution in 1789 and the rise to power of Napoleon I gave birth to the French civil code, or NAPOLEONIC CODE, in 1804. Spread throughout Europe by Napoleon's conquests, it became the most influential of the civil law national codes and was the basis of other national codes that followed: the Austrian Civil Code in 1811, the Italian Civil Code in 1865, the Spanish Civil Code in 1888, and the German Civil Code of 1900. Other comprehensive codes were compiled in Belgium, Romania, Bulgaria, Japan, Egypt, and many nations in Latin America. Even the law in the state of Louisiana, originally settled by the French in 1682, is heavily based on the French Civil Code.

The modern civil law systems that arose from ancient Roman law are distinguished by codification--the systematic and comprehensive statutory treatment of the law. The civil law COURTS base their decisions on enactments rather than on judicial precedent; the latter is the basis of common law. If the civil court ruling is attacked, the attack is on the ground that the statute has been misinterpreted or misapplied.

Modern continental European law resulted from the fusion of Germanic customary law and Roman law. To these were added contributions from feudal law, canon law, and the law of the merchant. It was a gradual process molded by nationalism, war, and revolution and revised and amended to meet the challenges of modern society.

Common Law

In England, however, a second system of legal justice, known as common law, evolved. Unlike the civil law system, common law is not a written code but is based on written judicial decisions that constitute precedent. This doctrine of following precedents is called stare decisis (Latin, "to stand by decided matters"). Statutes modify the law rather than embody it as in the civil law systems.

English law was initially based on the Germanic tribal customs. When the Normans invaded England in 1066, they found a legal system more advanced than their own. The Normans under William I (r. 1066-87) and his successors Henry II (r. 1154-89) and Edward I (r. 1272-1307) consolidated the conflicting local customs into the common law. Their objective was to curb the power of the feudal land owners and ensure the supremacy of the king. Trial by JURY was instituted, and the MAGNA CARTA (1215) placed the king under the rule of law. Magistrates, or justices, traveled from town to town to hear cases. The office of judge became a full-time career. Admission to the bar was contingent upon legal knowledge. Pleas to the king's chancellor for fair solutions to wrongs not righted by common law courts created a separate body of law called EQUITY, which was not merged with common law in England until 1873, and which survives in the United States in a few states.

As the revival of Roman law and its resulting codification spread through continental Europe during the later part of the Middle Ages, it stopped at the English Channel. Strong nationalism and a unified legal profession preserved the common law system in England. A guild of lawyers and their apprentices appeared in the 14th century. The INNS OF COURT provided education for law students. Court decisions were published (1300-1535) in Year Books, and these decisions were referred to in arguing and deciding cases. The Year Books provided a common and continuous legal record, ensuring the development of a uniquely English system.

Common law advanced through the teaching and writing of English legal scholars. Henry de Bracton (d. 1268) and Sir Edward COKE (1552-1634) advocated the common law system in their legal treatises. Sir William BLACKSTONE's Commentaries on the Laws of England (1765-69) analyzed English law and became the basis of legal education in the New World.

The common law system spread through English colonization and conquest. The United States was one of the first to adopt and defend this system. Common law also exists in the British Commonwealth nations and in former colonies such as India. Flexible and adaptable to change, common law proved a viable legal system.

Law in the North American Colonies

Because the majority of the colonists who first settled America came from England, the common law system was introduced in many colonies. More important was the reliance on Blackstone's Commentaries. The influence of this work, along with the lack of any law schools in America until 1784, a fact that necessitated the training of lawyers in England, established English common law in America.

Lawyers led the fight for independence and were instrumental in composing the CONSTITUTION OF THE UNITED STATES (1787) and the BILL OF RIGHTS (1791). Of the 56 signers of the DECLARATION OF INDEPENDENCE (1776), 25 were attorneys; so were 31 of the 55 members of the CONSTITUTIONAL CONVENTION (1787).

The United States Constitution

The leaders of the new republic recognized the need for a written constitution that would define the permanent shape of the government and list essential rights of citizens after the ARTICLES OF CONFEDERATION were quickly recognized as inadequate. The Constitutional Convention was convened to establish a sustainable relationship among the various levels of government and between citizens and the government. The Bill of Rights, contained in the first ten amendments to the Constitution, provided explicit protections against the abuse of government power. Each state eventually created an individual constitution, and many of them also incorporated specific rights. It was the U.S. SUPREME COURT, especially under Chief Justice John MARSHALL, that took upon itself the power to declare Congressional acts invalid if they conflicted with the Constitution (MARBURY V. MADISON, 1803). The Supreme Court, although guided by precedent, must weigh legislation against the principles and written constraints of the Constitution.

Civil Rights

After the Revolutionary War common law survived, despite prejudice against the English. The writings of scholarly jurists such as Joseph STORY, who wrote Commentaries on the Constitution of the United States (1833), would help adapt it to unique American circumstances. The emphasis in U.S. law shifted from property rights in the late 19th and early 20th centuries to CIVIL RIGHTS and liberties in the middle and later part of the 20th century. The 14th AMENDMENT (1868), which guarantees DUE PROCESS and EQUAL PROTECTION OF THE LAWS, became the mechanism for the Supreme Court to extend its judicial authority to state laws, thus allowing federal courts to determine the constitutionality of state statutes and to protect individual rights (see JUDICIAL REVIEW).

The Court outlawed segregation in public schools (BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS, 1954); guaranteed the fundamental freedoms of press, speech, and religion (see FREEDOM OF THE PRESS; FREEDOM OF SPEECH; FREEDOM OF RELIGION); ensured the right to a trial by jury for criminal offenses; and added constitutional protections to those accused of crimes. The Court ruled that EVIDENCE obtained by illegal searches and seizures cannot be used in trials (Weeks v. U.S., 1914, and MAPP V. OHIO, 1961), and it held that a criminal suspect must be informed of his or her right to remain silent (see SELF INCRIMINATION) and to legal counsel (see MIRANDA V. ARIZONA, 1966). Continuing modifications and refinements of these rights have shown the adaptability of the common law to a changing American society.

Separation of Powers

An important aspect of the constitutional system in the United States is the granting of distinct powers to each of the three branches of government. One of the vital functions of the judicial branch has been to protect the supremacy of law from abuse by the executive branch. In cases such as YOUNGSTOWN SHEET AND TUBE COMPANY V. SAWYER (1952) and UNITED STATES V. NIXON (1974), the Supreme Court respectively upheld the primacy of statutory authority and overruled the assertion of executive privilege when it was faced with the fundamental requirements of due process of law. Likewise, Congress and the Supreme Court often struggle over interpretation and intent of legislation, forcing reevaluation and clarification of national policy, as for example, when the Court invalidated much of President Franklin Roosevelt's NEW DEAL legislation.

This interaction among the branches of government and the evolutionary nature of common law have combined to give an extremely political aspect to the judicial process. Decisions on volatile issues such as the rights of criminal suspects often shift according to time and experience more than on a strict application of previous decisions. The appointment of judges, especially Supreme Court justices, is frequently an occasion for a spirited examination of a nominee's attitudes and convictions on a wide range of subjects.

Judicial activism has itself become a controversial issue among legislators and others. The division is largely between those who believe that judges should confine themselves to limited legal questions, and those who believe that judges can, by interpreting and refining existing law, make new law that will further a particular social and political agenda. The Supreme Court under Chief Justice Earl Warren, for example, was attacked by some and praised by others for its activism in protecting and expanding the rights of criminal defendants and in imposing stricter controls on the police. Many contend that the Court under Chief Justice Rehnquist is equally as active in the opposite direction, following a period under Warren Burger in which the Court was more restrained in the scope of its decisions.

On the other side of the equation, Congress, for example, in the early 1990s, wrote civil rights legislation that was designed specifically to reverse the effects of several Supreme Court decisions in the area of affirmative action, only to have the bills vetoed by President Bush. The outcome of such legal struggles among the branches of government can have important consequences for individuals and businesses.

Corporate and Administrative Law

The debate over these civil rights bills highlighted the increasing complexity of the issues with which U.S. law must deal. Early Supreme Court decisions in DARTMOUTH COLLEGE V. WOODWARD (1819) and the Bank of Augusta v. Earle (1839) gave impetus to corporate growth. As corporations grew in the 19th and early 20th centuries, so did demands for their control. Laws were written over time covering topics from taxes to shareholder rights.

New methods of GOVERNMENT REGULATION were also created by state and federal legislation to control the development of corporations. These regulations have reached into virtually every facet of business and affect every corporation from General Motors to the neighborhood grocery store. Environmental regulations, occupational health and safety standards, minimum wage laws, tax codes, truth-in-advertising rules, and a host of other regulations are imposed and administered by government agencies created to implement legislative mandates. Many of theses agencies have established their own systems of ADMINISTRATIVE LAW for hearing and deciding cases related to these regulations, a system that largely operates outside the traditional common law procedures, although the fundamental principles are at least in part derived from the U.S. Constitution.

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See also: CONTRACT; CRIMINAL LAW; LEGAL PROCEDURE; MARITIME LAW; MILITARY JUSTICE; PROPERTY; TORT.